

Federal Court



Cour fédérale

Date: 20161027

Docket: IMM-1701-16

Citation: 2016 FC 1195

[ENGLISH TRANSLATION]

Montréal, Quebec, October 27, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

HAYAT HAGE-NASSAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. **Background**

[1] The provisions concerning dependent adult children in family class applications for permanent residence are section 2 and paragraph 117(1)(b) of the *Immigration and Refugee Protection Regulations* (IRPR).

[2] The evidence shows that the applicant is suffering from a severe chronic condition. She is unable to provide for herself outside the home and remains dependent on the support of her family to be stable, independent and functional. The medication she takes makes it extremely difficult for the applicant to function outside the home without her family's support. In reviewing the case law submitted, the Court finds that each case presented is a leading case where the particular facts provide a unique picture, every time. The picture drawn by the applicant's case before the Court is unique. It illustrates the narrative of a person who is neither stable nor self-reliant without the support of a member of her family standing by her side.

II. Nature of the matter

[3] This is an application for leave to apply for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision by a visa officer at the Canadian Embassy in Lebanon rendered on March 3, 2016, denying the applicant permanent residence as a dependent child under section 2 and paragraph 117(1)(b) of the IRPR.

III. Facts

[4] The applicant, age 50, is a Lebanese citizen. She is single, has never been married and has no children. She has three brothers: M. H.-N. and J. H.-N., who live in Canada; G. H.-N., who lives in the United States. Her mother, G.B., is 78 years old and is still living in Lebanon. Her father died on July 12, 2009.

[5] The applicant has been suffering from chronic depression and anxiety since she was an adolescent. She says her medical condition has worsened since her father died. She has been receiving psychiatric treatment since 2006. Her condition is stable, but she does not work and still lives with her mother.

[6] On October 12, 2010, the appellant's brother, M. H-N., filed a sponsorship application with Citizenship and Immigration Canada (CIC) for his mother, G.B., and for the applicant, as the mother's dependent adult child.

[7] On October 28, 2014, M. H.-N. provided CIC with documents relating to G.B's and the applicant's application for permanent residence, including medical certificates dated July 2, 2010, and January 10, 2011, regarding the applicant's psychiatric treatment.

[8] On March 10, 2015, the applicant obtained a Certificat de Sélection du Québec.

[9] On November 3, 2015, a new medical certificate from the applicant's psychiatrist, dated September 29, 2015, was sent to the Canadian Embassy in Beirut.

[10] On February 22, 2016, and March 2, 2016, respectively, G.B. and the applicant participated in an interview with an immigration officer at the Canadian Embassy in Beirut.

[11] On March 3, 2016, G.B.'s sponsorship application for permanent residence was approved, but the applicant's application was denied.

IV. Decision

[12] On March 3, 2016, the applicant's sponsorship application for permanent residence was denied by the immigration officer at the Canadian Embassy in Lebanon because she did not meet the criteria for a dependent child as defined in section 2 of the IRPR. The officer was not satisfied that the applicant could be considered a dependent child because of her state of health.

V. Submissions of the parties

A. *Submissions of the applicant*

[13] The applicant argued that the officer's decision was unreasonable because she erred in assessing the evidence submitted regarding the seriousness of her depression and anxiety disorder, and on the other hand, the applicant's ability to live independently.

[14] The applicant maintained that her depression and anxiety were highly limiting. She slept a lot because of her medication and was unable to work or do anything other than light tasks to help her mother. She painted and sold her works occasionally at exhibitions held at the church three times a year. Her paintings sold for between 50,000 and 100,000 Lebanese pounds (between CAD\$40 and CAD\$90), and she shared the proceeds with the church.

[15] The evidence submitted should have satisfied the officer that she met the definition of a dependent child who was unable to support herself because of her mental condition. According to the applicant, the officer's decision was incomprehensible because it ran counter to the three

medical reports provided. The reports produced by her treating psychiatrist indicated that the applicant had suffered from chronic depression and anxiety since she was an adolescent and that she required regular psychiatric treatment and daily medical care. They stated that the applicant's condition was stable while she was under medication and that she needed her family's support.

[16] The applicant also argued that the officer erred in finding that the applicant could live on the sale of her paintings at the church, without relying on concrete evidence.

B. *Submissions of the respondent*

[17] The respondent maintained that the officer's decision was reasonable.

[18] The respondent submitted that it was up to the applicant to prove that she was a dependent adult child due to her mental condition and that she was financially dependent on her mother. However, the applicant apparently failed to provide any recent compelling evidence of ongoing and permanent financial support since she was 19 years old. Consequently, she did not demonstrate that she was a member of the class described in section 2 of the IRPR.

VI. Issue

[19] The issue in this case is the following:

1. Did the immigration officer err in finding that the applicant did not meet the definition of dependent child set out in section 2 of the IRPR?

[20] This is a question of mixed fact and law, subject to the standard of reasonableness and requiring a degree of deference from the Court regarding the findings reached by the officer (*Nawfal v Canada (Citizenship and Immigration)*, 2011 FC 464; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]).

VII. Relevant provisions

[21] The provisions applicable to dependent adult children in family class applications for permanent residence are section 2 and paragraph 117(1)(b) of the IRPR.

VIII. Analysis

[22] After having reviewed the case, the Court finds that the immigration officer erred in her analysis of the evidence regarding the status of dependent adult child, in that her findings were contrary to the medical evidence submitted by the applicant. The decision rendered is therefore unreasonable.

[23] The immigration officer reasoned as follows regarding the applicant's mental state and her ability to provide for herself on her own;

[...] A doctor's note was submitted at the interview which states that Hayat has suffered from depression for several years and responds to the treatment and is stable. She can look after her own personal hygiene and requires family support to avoid relapse. During the interview Hayat was very coherent and answered all the questions with ease. Hayat stated she works as an artist and sells her paintings for a living. She stated she can manage herself. [...] Based on the evidence submitted and the interviews conducted with mother and daughter I am not satisfied that PA meets definition of R2 – that she is unable to become financially self-

supporting due to a medical condition. Hayat's doctor states that she is responding well to treatment and is stable. Hayat states she is financially self sufficient. During the interview with Hayat's mother, her mother also stated that Hayat can financially support herself. [...]

[Officer's notes stored in CAIPS/GCMS, at p. 5]

[24] However, on July 2, 2010, the applicant's psychiatrist stated that she had been suffering from chronic depression for several years and was in partial remission. He indicated that she required regular psychiatric treatment as well as family support because she cannot be left alone. He added that she was highly sensitive to psychotherapeutic agents.

[25] In addition, on January 10, 2010, the applicant's psychiatrist reiterated that she had been suffering from chronic depression and anxiety since she was an adolescent. He reiterated that she was responding well to treatment and was in clinical remission, but that she needed regular psychiatric treatment and that she depends on her mother's support. The psychiatrist emphasized that she was unable to work despite being in remission and that she was financially dependent on her family.

[26] Finally, on September 29, 2015, the psychiatrist again confirmed the applicant's mental condition. He reiterated the fact that she was stable and responding well to drug therapy, which enabled her to function independently, despite the fact that she still needed family support to remain stable.

[27] When questioned at the interview, the applicant stated that she often slept because of her medication and did not work, cook or drive. She held a bank account with her mother, with

whom she was living. She occasionally painted and managed to sell some paintings at exhibitions organized by the church three times a year, for sums not exceeding CAD\$100 per painting, which she shared with the church. The applicant's overall testimony indicated that she was financially dependent on her mother or brothers and was not self-reliant.

[28] After having reviewed this case, the Court finds that the immigration officer rendered a decision, which disregarded the medical evidence presented. She found that the applicant had not been financially dependent on her mother since she had reach adulthood due to her mental condition, despite three medical notes to the contrary.

[29] The evidence shows that the applicant is suffering from a severe chronic condition. She is unable to provide for herself outside the home and remains dependent on the support of her family to be stable, independent and functional. The medication she takes makes it extremely difficult for the applicant to function outside her home without her family's support. In reviewing the case law submitted, the Court finds that each case presented is a leading case where the particular facts provide a unique picture, every time. The picture drawn by the applicant's case before the Court is unique. It illustrates the narrative of a person who is neither stable nor self-reliant without the support of a member of her family standing by her side.

[30] Consequently, the officer rendered a decision that was not justified, transparent and intelligible, and it did not fall within the range of possible acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir*, above, at paragraph 47).

IX. Conclusions

[31] The application for judicial review is allowed and the case is returned for reconsideration by another immigration officer at the Canadian Embassy in Beirut, Lebanon.

[32] No questions of general importance were certified.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. the application for judicial review is allowed and the case is returned for reconsideration by another immigration officer at the Canadian Embassy in Beirut, Lebanon.
2. No questions of general importance were certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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